EVIDENCE—VARYING IMPLICATIONS OF LAW BY PAROL EVIDENCE.—Defendant gave the plaintiff a written order for goods which contained no express stipulation as to the time for shipment. Upon the delivery the defendant refused to accept them and the plaintiff brought an action for the goods sold. The defense was that the order was given upon a condition precedent, in support of which the court admitted parol evidence showing that at the time the written order was given the parties agreed that it should become operative only in case the goods were delivered in "two weeks or thereabouts", and the goods were not so delivered. *Held,* (BROWN and BUNN, JJ., dissenting), that there was no error, that this evidence did not vary the terms of a written contract but showed that no contract was ever made. *S. F. Bowser & Co.* v. *Fountain,* (Minn. 1915) 150 N. W. 795.

It is generally accepted that the rule prohibiting parol evidence to vary, alter or contradict the terms of a written instrument is inapplicable where the object is to show that that which purports to be a valid written contract is in fact no contract at all. *Wilson* v. *Powers,* 131 Mass. 539; *Pym* v. *Campbell,* 6 El. & Bl. 370. The evidence was inadmissible on the theory of partial integration, in which case parol evidence is admissible to show additional, but not inconsistent stipulations which, from an examination of the writing, appear to have been omitted. *Durkin* v. *Cobleigh,* 156 Mass. 108; *Halliday* v. *Mulligan,* 113 Ill. App. 177; *Gould* v. *Boston Excelsior Co.,* 91 Me. 214. In these cases the omitted matter is such as is not furnished by any implication of law. But the authority is abundant that where the contract, as in the principal case, is silent as to the time of delivery the law implies a reasonable time. Since, therefore, the omitted matter is one which the law supplies, the contract here is as complete as if it contained an express stipulation as to delivery, and logically it would follow that such implied term, like an express one, ought not to be varied or contradicted by parol evidence. Accordingly it is held that the implication which the law raises, that delivery is to be made in a reasonable time, cannot be varied by parol evidence of a contemporaneous oral agreement that delivery was to be made at a specified time. *Blake Mfg. Co.* v. *Jaeger,* 81 Mo. App. 239; *Driver* v. *Ford,* 90 Ill. 595; *Atwood* v. *Cobb,* 16 Pick. 227; *Stange* v. *Wilson,* 17 Mich. 342; *Standard Box Co.* v. *Mutual Biscuit Co.,* 10 Col. App. 746, 103 Pac. 938; *Crocker* v. *Franklin Hemp & Flax Mfg. Co.,* 3 Sumn. 520, Fed. Cas. 2932; *Cameron Coal & Mercantile Co.* v. *Block,* 26 Okla. 615. The effect of the evidence in the principal case would seem to vary the terms of a complete written contract, in regard to a matter concerning which the contract is not silent, the implied term as to delivery being as much a part of the contract as if written therein in words. The contract was not incomplete and its terms, both expressed and implied, should be conclusive on the parties.

HUSBAND AND WIFE—ESTATE CREATED BY HUSBAND'S DEED TO HUSBAND AND WIFE.—The husband made a deed of a homestead between himself as party of the first part, and the husband and wife jointly, as party of the second part, the survivor to have full ownership. *Held,* (BROOKE, C. J., and MCALVAY, J., dissenting), this creates neither an estate in entirety nor in

joint tenancy, but creates an estate in common, which, upon the death of the parties, would descend to their respective heirs. *Wright, et al.* v. *Knapp,* (Mich. 1915) 150 N. W. 315.

As a general proposition a conveyance to a husband and wife, as such, creates an estate of entirety, and does not make them joint tenants or tenants in common. *Fisher* v. *Provin,* 25 Mich. 347; *Aetna Ins. Co.* v. *Resh,* 40 Mich. 241; *Jacobs* v. *Miller,* 50 Mich. 119, 15 N. W. 42. The principal case is taken out of the general rule because a grantor cannot convey directly to himself. The minority, assuming this to be true, still find a valid conveyance to the wife on the ground that where one of several grantees, for any reason, is incapable of taking, one or others capable of taking shall take the whole. *Dowsett* v. *Sweet,* 1 Ambler, 175; *Humphrey* v. *Tayleur,* Id. 136; *Ball* v. *Deas,* 2 Strob. Eq. (S. C.) 24, 49 Am. Dec. 651; *Cameron* v. *Steves,* 9 N. Brunsw. 141; *McCord* v. *Bright,* 44 Ind. App. 275, 87 N. E. 654. The majority treats the conveyance as reserving an equal interest to the grantor, making him and his wife tenants in common and allowing their shares to descend to their respective heirs. The minority seems to follow the spirit of the deed more closely than the remainder of the court inasmuch as the clear intention as expressed in the words "the survivor to have full ownership of the same" was to create a joint tenancy, and where such is the case and one is unable to participate, the survivor takes the entire estate. *Buffor* v. *Bradford,* 2 Atk. 220; *Gardner* v. *Printup,* 2 Barb. 83.

HUSBAND AND WIFE—EXTINGUISHMENT OF ANTE-NUPTIAL DEBTS.—Plaintiff and defendant are wife and husband. At the time of the execution, by the plaintiff, of the mortgage involved in this case, they were not married. Plaintiff instituted this action against defendant, her husband, to cancel the mortgage on the ground that it had been extinguished by the inter-marriage of the parties. Under the statute the wife has control over her property and can sue and be sued in respect thereto. *Held,* (two judges dissenting) that the common law doctrine as to the unity of husband and wife has been abrogated to the extent that the obligations incurred before the marriage relation was entered into are not extinguished by the marriage. *McKie* v. *McKie,* (Ark. 1915), 172 S. W. 891.

The rule at common law was that the intermarriage of debtor and creditor extinguished the obligation. *Abbot* v. *Winchester,* 105 Mass. 115, *Power* v. *Lester,* 23 N. Y. 527. The reason for the rule was that the legal identity of the wife was merged in that of the husband, and he became entitled to her personal property and the rents and profits of her real estate. *Butler* v. *Ives,* 139 Mass. 202. The question involved in the instant case—whether modern statutes giving a wife control of her separate estate and the right to sue and be sued in respect thereto has abrogated the rule as to extinguishment of ante-nuptial debts by marriage—has been passed upon in several states. Some courts have construed these statutes strictly and held that unless the rules at common law have been expressly changed, they are still in full force and that therefore ante-nuptial debts are extinguished by marriage. *Long* v. *Kinney,* 49 Ind. 235; *Shilling* v. *Dormody,* 102 Tenn.